IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 443

CHARLOTTE C. WORLEY, Debtor,
Petitioner,
vs.

CHARLES W. WAHLQUIST, FRANCIS M. WHITLOCK, as Administrator of the Estate of SARAH E. WHITLOCK, Deceased; AMERICAN BANKERS INSURANCE COMPANY, a Corporation; THE OMAHA NATIONAL BANK, a Corporation, Trustee; ROBERT L. SMITH; and OAK PARK TRUST AND SAVINGS BANK, Trustee, Secured Creditors

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

W. C. Fraser,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Charlotte C. Worley, petitioner, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals, Eighth Circuit, in the above cause,

designated in said court as No. 12960, wherein this petitioner was appellant and the respondents appellees.

I

Judgment and Opinion of Circuit Court of Appeals

Said judgment was entered on August 8, 1945.

The opinion of the court below is not yet reported, but is found on pages 301 to 308, inclusive, of the transcript of record in this cause, certified to on the 29th day of August, 1945, by E. E. Koch, Clerk of the United States Circuit Court of Appeals, Eighth Circuit, herewith submitted.

II

Jurisdiction Statement

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended (28 U. S. C. A. 347(a).

III

Questions Presented

The questions presented by this petition for writ of certiorari are:

1. Under Section 75(s) of the Bankruptcy Act, as amended (11 U. S. C. A. 203(s)), does a farm debtor have the right to make settlement outside of court with some of the secured creditors whereby such secured creditors waive payment of rent which would be otherwise due under the rental order of the court?

2. Under said Section 75(s) of the Bankruptcy Act, as amended (11 U. S. C. A. 203(s)), can a farm debtor be held to be contumaciously delinquent under the rental or-

der, so as to justify the court in terminating the stay provided by said Act for a failure of the debtor to comply with the orders of the court, where the farm debtor has produced a statement from a part of the secured creditors that they are willing to waive their share of the rents, which would otherwise be due them under said rental order, and such farm debtor has offered to pay into court the amount of the rentals due the remaining secured creditors, who have not so waived?

3. Under said Section 75(s) of the Bankruptcy Act, as amended (11 U. S. C. A. 203(s)), can a farm debtor be held to be contumaciously violating the orders of the court when such debtor has made outside settlements and financial arrangements as to rents and as to redemption with friendly secured creditors without obtaining prior approval of the court?

4. Under said Section 75(s) of the Bankruptcy Act, as amended (11 U. S. C. A. 203(s)), does the court have judicial discretion to refuse to permit the farm debtor to make redemption at the value fixed by the initial and sole appraisal, where such debtor has petitioner for such right from the time such appraisal was made and was confirmed by the court continuously thereafter, and has never been accorded an opportunity to redeem at such initial and sole appraisal, although she has caused funds therefore to be deposited into court.

5. Under said Section 75(s) of the Bankruptcy Act, as amended (11 U. S. C. A. 203(s)), is it proper for the court to deny the farm debtor the right to redeem at the initial and sole appraisal where the delay in making redemption was due to no fault of the farm debtor?

6. Under said Section 75(s) of the Bankruptcy Act, as amended (11 U. S. C. A. 203(s)), do the secured creditors

have an absolute right to insist that the debtor be required to redeem at a value determined by a reappraisal and to deny the debtor any opportunity to redeem at the value fixed by the initial and sole appraisal?

IV

Short Statement of the Matter Involved

Miss Worley, the petitioner herein, owns a large ranch in Box Butte County, Nebraska, consisting of 2,960 acres which she herself farms. This ranch is composed of a number of different legal subdivisions and each legal subdivision was mortgaged under a separate mortgage to different secured creditors. The debtor also owns some hay land in Sheridan County, and lands in Dawes County, Nebraska, which are leased to tenants and which were separately mortgaged. The respondents here are but a part of such total number of secured creditors. The respondents hold mortgages on different legal subdivisions constituting a part of the debtor's total property. The debtor has made arrangements for settlement with the remaining secured creditors, which arrangements have been made outside of court.

Although the debtor had requested an appraisal of her property at the time she filed her amended petition on April 18, 1939, no appraisal was had. The debtor thereupon on January 23, 1942, filed a further request for an appraisal stating that she desired to redeem the property at its appraised value, the property never having been theretofore appraised. She prayed that the court cause her property to be appraised to the end that she immediately pay the value thereof and reacquire same. The court thereupon appointed appraisers who finally under dates of May 21, 1942, and June 18, 1942, filed their appraisal of the prop-

erty. No other appraisal has ever been ordered or made. To the appraisal certain secured creditors, the respondents herein, filed exceptions; and, after hearing, an order was entered by the court on August 6, 1942, overruling and denying the respondents' exceptions. No appeal was taken. Then on August 12, 1942, the debtor filed a request that the court fix the time and terms of payment of the appraisal. This request was denied by the court on January 23, 1943. The secured creditors, who owned all of the mortgages other than those held by the respondents herein, had several months before, filed their acceptances of the appraisal and signified their willingness to permit redemption by the debtor at such appraised amount.

On January 23, 1943, the court referred the matter to the Conciliation Commissioner for the fixing of rental for the three year statutory stay. The order of the Conciliation Commissioner fixing rent was filed February 19, 1943. The order staying proceedings for three years was entered by the court on February 22, 1943. Thereafter on September 4, 1943, the respondents herein filed request for reappraisal, upon which no action has ever been taken.

On September 27, 1943, the respondents filed an application to terminate the stay alleging that the petitioner was in default on the payment rent under the rental order of the court. This application prayed that the court appoint a trustee and that the trustee proceed to sell the property subject to the right of redemption of the debtor. To this the debtor filed an answer and cross petition wherein she denied default in the rent order. Petitioner alleged that she had made settlement with all of the secured creditors, other than the respondents herein, for the rents and that such remaining secured creditors were not requesting that any rents be paid into court for them. The debtor further alleged that she had been trying to redeem for a long

period of time and that redemption had been delayed by reason of excessive demand of the secured creditors, respondents herein. The debtor again demanded that the court fix the time and terms for redemption under the appraisal. To this the secured creditors, respondents herein, filed a reply admitting that they had demanded that the debtor pay all delinquent rents before she could redeem and sating further that the debtor could not make redemption without granting to them a reappraisal of the properties.

The secured creditors, other than the respondents herein, filed a petition alleging that the debtor had made arrangements with them to rdeem her lands and had made arrangements with them in satisfaction of any rents due. Such secured creditors prayed that the court enter an order fixing and determining the time and terms for redemption under the appraisal.

At the trial in the district court on December 6, 1943, the debtor tendered into court the amount of the initial and sole appraised value of the tracts of real estate upon which the respondents herein held their mortgages, and the debtor further offered to pay the rent due the respondents. The other secured creditors filed written waivers of any right to share in such tenders. The respondents herein objected to the redemption tender, alleging the same was premature and that a reappraisal must first be had and alleging further that the debtor was not entitled to redeem unless the rents for 1943 and prior years had been paid in full.

Thereafter the district court entered four orders as follows: First, an order finding that the debtor was in default of the payment of rent for the year 1943 and that the accounting and tender made by the debtor in open court at the time of hearing was not sufficient; and ordering that, unless the debtor accounted for all rents due within fifteen days, the stay shall be terminated and a trustee

appointed and the real estate upon which respondents held their liens sohuld be sold by said trustee. Secondly, the court order denied and refused the debtor's tender for redemption. Third, the court dismissed the petition of the bankrupt to redeem. Fourth, the court entered an order reserving final ruling upon the application of the secured creditors, respondents, for reappraisal.

The orders of the district court were all affirmed by the Circuit Court of Appeals, except that court reversed the order directing the property to be sold if the debtor failed to comply with the rental accounting order. The Circuit Court of Appeals ruled that the trial court must first grant a reappraisal or fix the value of the real estate on a hearing and give petitioner a reasonable opportunity to make redemption thereafter before the property should be ordered sold at public auction.

V

Reasons Relied Upon for the Allowance of the Writ

1. This case presents important questions with respect to the procedure required by Section 75(s) of the Bankruptcy Act as amended (11 U. S. C. A. 203 (s)).

2. The decision of the Circuit Court of Appeals deprives a farm debtor of the right and opportunity to make compromise settlements with secured creditors so as to provide for the debtor's financial rehabilitation.

3. The decision of the Circuit Court of Appeals appears to establish the rule that the secured creditors can in any and every case prevent the farm debtor form redeeming at the initial appraisal.

4. The construction by the Circuit Court of Appeals of Section 75(s) of the Bankruptcy Act makes meaningless the provisions of said Act giving the farm debtor a right to

redeem at the appraised value, and adopts a construction of said Act which in effect renders wholly nugatory and illusory any opportunity on the part of the farm debtor to redeem at the value fixed by the appraisal provided by said Act.

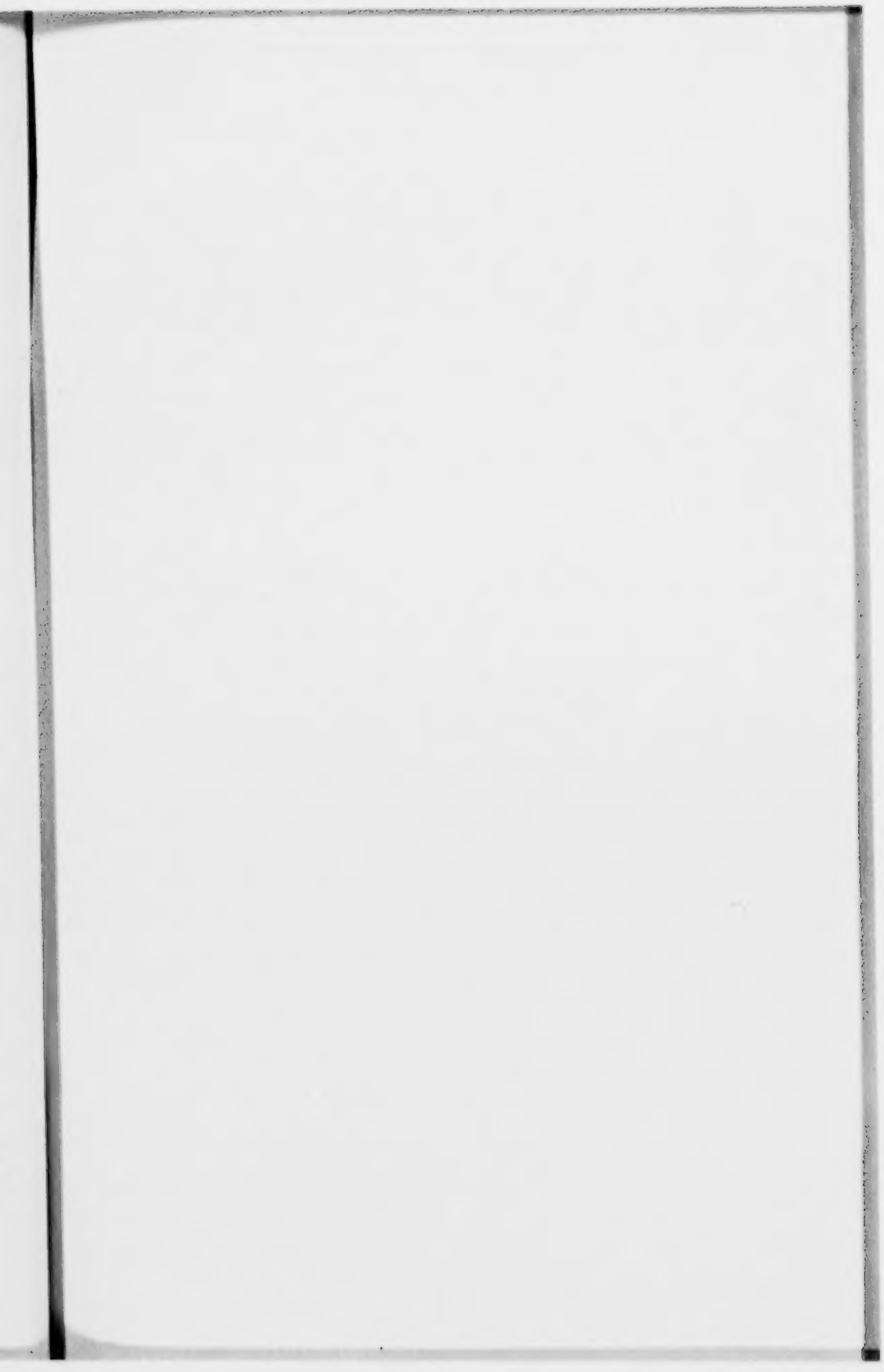
5. The decision of the Circuit Court of Appeals does violence to the reasoning of this Court and the rules laid down by this Court in the case of *Wright* v. *United Central Life Insurance Co.*, 61 S. Ct. 196, 311 U. S. 273, 85 L. Ed. 184, 44 Am. Bankr. Rep. (N. S.) 280.

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari should be granted.

Respectfully submitted,

W. C. FRASER,
C. F. CONNOLLY,
CROFOOT, FRASER, CONNOLLY & STRYKER,
Counsel for Petitioner, Charlotte C. Worley, Debtor.

Dated: September 21, 1945.



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OCTOBER TERM, 1945

No. 443

CHARLOTTE C. WORLEY, DEBTOR,
Petitioner,

vs.

CHARLES W. WAHLQUIST, ET AL., SECURED CREDITORS

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Opinion Below

The opinion of the court below, not yet reported, is found on pages 301 to 308, inclusive, of the transcript of record in this cause certified to on the 29th day of August, 1945, by E. E. Koch, Clerk of the United States Circuit Court of Appeals, Eighth Circuit, herewith submitted. The judgment of the said court complained of was entered on the 8th day of August, 1945.

Jurisdiction of This Court

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended (28 U. S. C. A. 347(a)).

Statement of the Case

A short statement of the case follows:

Miss Worley, the petitioner herein, owns a large ranch in Box Butte County, Nebraska, consisting of 2,960 acres which she herself farms. This ranch is composed of a number of different legal subdivisions. Each subdivision was mortgaged under a separate mortgage to different secured creditors. The debtor also owns some hay land in Sheridan County and lands in Dawes County, Nebraska, which are leased to tenants and separately mortgaged. The respondents here are a part of her secured creditors. The respondents held mortgages on different legal subdivisions, constituting a part of the debtor's total property. The debtor has made arrangements for settlement with the remaining secured creditors. Such arrangements have been made outside of court.

Although the debtor had requested an appraisal of her property at the time she filed her amended petition on April 18, 1939, no appraisal was had. The debtor, on January 23, 1942, filed a further request for an appraisal stating that she desired to redeem her proyerty at its appraised value, the property never having been theretofore appraised. She prayed that the court cause her property to be appraised to the end that she immediately pay the value thereof and reacquire it. The court thereupon appointed appraisers who finally under date of May 21, 1942, and June 18, 1942, filed their appraisal of the property. No other appraisal has ever been ordered or made. The secured creditors, the respondents herein, filled exceptions to the appraisal amount, and, after hearing, an order was entered by the court on August 6, 1942, overruling and denying respondents' exceptions. No appeal was taken from such order. Then on August 12, 1942, the debtor filed a request

that the court fix the time and terms of payment of the appraisal, but this request was denied by the court on January 23, 1943. On September 16, 1942, all the other secured creditors, who owned all of the mortgages other than those held by the respondents herein, had filed their acceptance of the appraisal and signified their willingness to permit redemption by the debtor at the appraisal amount.

On January 23, 1943, the court referred the matter to the Conciliation Commissioner for the fixing of rental for the three years' statutory stay. The order of the Conciliation Commissioner fixing rent was filed February 19, 1943. The order staying proceedings for three years was entered by the court on February 22, 1943. Thereafter, on September 4, 1943, the respondents herein filed separate requests for reappraisal, but have never brought such matter up for hearing.

On September 27, 1943, the respondents filed a joint application to terminate the stay, alleging that the petitioner was in default on the payment of rent under the rental order of the court. This application prayed that the court appoint a trustee and that the trustee proceed to sell the property subject to the rights of redemption of the debtor. To this the debtor filed an answer and cross-petition, wherein she denied default in the rent order. She alleged that she had made settlement with all of the secured creditors, other than the respondents herein, for the rents, and that such remaining secured creditors were not requesting any rents be paid into court for them. The debtor further alleged that she had been trying to redeem for a long period of time and that redemption had been delayed by reason of excessive demands of the secured creditors, respondents herein. The debtor again demanded that the court fix the time and terms for redemption under the appraisal. To this the secured creditors, respondents herein, filed a reply admitting that they had demanded that the debtor

pay all delinquent rents before she could redeem and stating further that the debtor could not make redemption without granting to them a reappraisal of the properties.

The secured creditors, other than the respondents herein, filed a petition alleging that the debtor had made arrangements with them to redeem her lands and had made arrangements with them in satisfaction of any rents due. Such secured creditors prayed that the court enter an order fixing and determining the time and terms for redemption under the appraisal.

By proper pleadings, and at the trial in the district court on December 6, 1943, the debtor tendered and caused to be paid into court the amount of the initial and sole appraised value of the tracts of real estate upon which the respondents herein held their mortgages, and the debtor further offered to pay the rent due the respondents. The other secured creditors filed written waivers of any right to share in such tenders. The respondents objected to the redemption tender, alleging the same was premature and that a reappraisal must first be had and alleging further that the debtor was not entitled to redeem unless the rents for 1943 and prior years had been paid in full. The debtor petitioned the court for an order granting her redemption of her real estate and the assigning of said property to her. Objections to this petition for redemption were filed by the respondents.

Thereafter the district court entered four orders as follows: First, an order finding that the debtor was in default on the payment of rent for the year 1943 and that the accounting and tender made by the debtor in open court at the time of hearing were not sufficient; and ordering that, unless the debtor accounted for and paid all rents due within fifteen days, the stay shall be terminated and a trustee appointed and the real estate upon which respondents held their liens should be sold by said trustee. Secondly, the court order denied and refused the debtor's

tender for redemption. Third, the court dismissed the petition of the bankrupt to redeem. Fourth, the court entered an order reserving final ruling upon the application of the secured creditors, respondents, for reappraisal.

Petitioner appealed to the Circuit Court of Appeals, Eighth Circuit, from said orders, and the Circuit Court of Appeals held that the order of the trial court terminating the stay was erroneous to the extent that it directed a sale of the real estate in the event of the failure of the debtor to account for the rents without first directing a reappraisal, and granted the debtor a reasonable opportunity to redeem at an amount to be determined by a reappraisal. In all other respects all the orders of the district court were affirmed by the Circuit Court of Appeals.

Specifications of Error

It is respectfully urged that the Circuit Court of Appeals, Eighth Circuit, erred in this cause as follows:

1. In holding that the debtor, the petitioner herein, was in default on the payment of rents due under the order of the court, when the petitioner had produced a waiver of rents from a part of the secured creditors and had offered in open court to pay the rents due to the non-waiving secured creditors, the respondents.

2. In holding that a farm debtor is guilty of a contumacious violation of the orders of the court under Section 75(s) of the Bankruptcy Act, as amended, (11 U. S. C. A. 203(s)), when such debtor has made outside settlements and financial arrangements for payment of rent with some of the friendly secured creditors, without obtaining the prior approval of the court thereto.

3. In holding that, under the circumstances here involved, the farm debtor did not have a right to redeem her real

estate at the value fixed at the initial and sole appraisal, when, through no fault of the debtor and because of the improper demands on the part of the secured creditors, the farm debtor had been denied any opportunity to redeem at such value.

4. In holding that the secured creditors have an absolute right under Section 75(s) of the Bankruptcy Act, as amended, (11 U. S. C. A. 203(s)), to prevent a farm debtor from making redemption at the value fixed at the initial and sole appraisal simply by such creditors filing a demand for reappraisal.

5. In holding that the mere filing of request for reappraisal by a secured creditors, in proceedings under Section 75(s) of the Bankruptcy Act, as amended, (11 U. S. C. A. 203(s)), would deprive a farm debtor of an opportunity to redeem at the value fixed at the initial and sole appraisal; and that such request for reappraisal would remain pending indefinitely, until such time as the secured creditors would call same up for hearing, and thereby prevent the debtor from making redemption except at the time determined by such secured creditors.

ARGUMENT

Specifications Nos. 1 and 2 Regarding Rentals

The rental order of the court required the debtor to pay certain rents, the exact terms of which are not important here. This rental order was entered February 19, 1943, and the first rents would be due in the fall of 1943. It was the finding of the trial court, affirmed by the Circuit Court of Appeals, that the debtor was in default on the payment of such rents. While a number of items are alleged to constitute the default, the entire controversy hinges upon the question as to whether the debtor had a

right to file a waiver from some of the secured creditors and take credit for the amount so saved on the payment of the rentals. The debtor had offered to fully comply with the order of the court and make full accounting, and would have done so had she been given credit for the amount due to certain of the creditors, who had waived their claims to the rent. The question here presented therefore is simply whether a farm debtor can make private arrangements with a portion of her secured creditors to thereby save the rents which would be otherwise payable by the debtor under the rental order of the court. If the debtor is entitled to make such arrangements with any portion of her secured creditors, then the order here is clearly erroneous; but if the debtor is not entitled to make such an outside settlement, then the finding that the debtor was in default on the payment of rents is clearly correct.

It would seem that no citation of authority would be necessary to establish the proposition that the secured creditors could waive their share of the rents and thereby the debtor be relieved of the obligation to pay the amount so waived. Section 75(s)(2) of the Bankruptcy Act, (11 U. S. C. A. 203(s)(2), provides:

> "* * * the court shall stay all judicial or official proceedings in any court, * * * against the debtor or any of his property, for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semi-annually for that part of the property of which he retains possession. * * * Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear. * * *"

It would seem obvious from the provisions of this section of the statute that the rentals paid into court by the debtor are for the benefit of the secured creditors holding liens upon the respective properties. The rents are first to be applied to the taxes and upkeep and any balance is then to be paid directly to the creditors as their interests may appear. In the instant case the rents paid by the debtor would in turn be paid to the secured creditors; and by the rental order in this particular case it was provided that any such rentals would be paid to the secured creditors in proportion to their claims because the lands were all farmed as one unit. If, in the instant case, it be assumed that the rentals due from the debtor in the fall of 1943 amounted to $5,000.00, and that, in turn, half of such sum would be paid to certain friendly creditors, it would seem obvious that, instead of going through the roundabout procedure of the debtor paying into court the full amount of $5,000.00 and then having half paid to certain creditors who are friendly to the debtor, it would be just as well for the debtor to file a waiver from these friendly creditors and then pay into court only the balance of the rental due to the nonwaiving creditors.

This court has said in *Wright* v. *Union Central Life Insurance Company*, 61 Sup. Ct. 196, 311 U. S. 273, 83 L. Ed. 184, 44 Am. Bankr. Rep. (N. S.) 280, that,

> Syl. 3. "The Frazier Lemke Act (§ 75(s) of the Bankruptcy Act) must be liberally construed to give the farmer-debtor the full measure of relief afforded by Congress, and its benefits are not to be frittered away by narrow formalistic interpretations which disregard the spirit and letter of the act."

We believe that a requirement that the debtor pay into court the full amount of the rents due, even though some of the secured creditors have filed a waiver of their share

of the rents, would violate the intent of Congress that the Act be liberally construed to accord the debtor the benefits intended. It would seem to be a most futile thing to require the debtor to pay into court rents which would in turn be returned either to the debtor or the creditors with whom she had made certain financial arrangements. It would extinguish her efforts, and success attending same, in securing extensions, discounts and other relief from friendly creditors.

If we assume that the total rent due was the amount as found by the trial court, and if the debtor had paid that amount into court, the objecting secured creditors, the respondents herein, would only have been entitled to their share, and the remainder would have gone to the creditors with whom the debtor had made her private arrangements for outside settlement. Such requirement would render void and useless any concessions her friendly creditors had seen fit to give her. There is no dispute in the record but what such outside settlements were made with the creditors who filed a waiver of their share of the rents. Surely then, the debtor ought to be permitted to pay into court for the objecting creditors only the amount which would be in turn payable to them and be relieved of the payment, which would be in turn paid to the creditors who had been willing to and who had waived their share of the rentals.

In the instant case it is not a question of there being no proof as to the matter of the waiver of the rents by part of the creditors. The record (pages 80 to 83) shows a written waiver of rents by all of the secured creditors other than the respondents herein. This waiver in writing contained the following:

> "4. That these petitioners have further made settlement with the debtor respecting the rents and income

from the real estate upon which these petitioners hold their secured claims * * *

* * * * * * *

"6. * * * these petitioners do not desire or require any order of the court touching upon the settlement and accounting for the rents for the above mentioned real estate."

Surely, under these circumstances, for the court to find that the debtor was in default because she did not pay into court rents for the creditors with whom she had made outside settlements would seem to be captious to the highest degree and would seem to construe the provisions of the Bankruptcy Act most formalistically and narrowly instead of liberally. The objecting creditors, respondents herein, have no interest in the rents which were waived by the so-called friendly creditors, and since the debtor tendered into court for the objecting creditors, respondents herein, all that they were entitled to, or offered to do so, the order of the court finding the debtor to be in default under the rent order is clearly erroneous. Such an order disregards the spirit and letter of the Act. The effect of such order is to hinder, discourage, prevent and make it impossible for a debtor to accomplish her financial rehabilitation with the aid and assistance of her friendly creditors. It amounts to a prohibition against both the debtor and her creditors to freely enter into contracts. It tends to defeat the very purpose of this relief Act.

Both the trial court and the Circuit Court of Appeals were critical of the debtor and found, as one of the elements of her contumacious disobedience of the order, the fact that the debtor had made outside settlements with some of the creditors. As a matter of fact, we think that that is the very thing that the statute contemplates, namely, that during the period of stay the debtor be enabled to

make arrangements with the various creditors for the settlement and liquidation of their respective claims. If, by reason of the fact that the debtor received some income, which she was not obligated under the statute to pay to the creditors, and she in turn used that income to arrange for the liquidation of the claims of certain of the creditors, who were willing to compromise their indebtedness, same is of no concern to the remaining secured creditors or to the court. If the debtor is able to interest friends, associates, relatives or others to help her to rehabilitate herself, she should be encouraged to do so, rather than be criticized. The Act gives her three years to solve her financial problems,—not merely to exist and put off her ultimate financial downfall.

The Circuit Court of Appeals, Eighth Circuit, in *Klevmoen* v. *Farm Credit Administration*, 138 Fed. (2) 609, has held:

> "* * * It is provided that he (the debtor) shall remain in possession of his property under the supervision and control of the court * * * provided he pays a reasonable rental * * * Paying that rental in respect, now, of real estate, he is entitled, in our opinion, to so much of the products of the soil as remains above the rental, first to defray the expense * * * and secondly, in theory at least, as an instrument of redemption."

If the Circuit Court of Appeals concedes that the debtor has the right to use any unobligated income as an instrument of redemption, it would seem that the making of compromise settlements with any willing creditors is such an instrument of redemption. The Circuit Court of Appeals in the cited case admits that the debtor had the right to use all of her income over and above the amount due as rents for the purpose of aiding in her financial rehabilitation. The debtor therefore ought not to be criti-

cized in the instant case because she used some of her funds thus to make settlements with a portion of the creditors or to buy up a portion of the outstanding secured claims and have them placed in friendly hands. Where she used all funds obtainable from her operations and from her friends and relatives to alleviate her financial stress, instead of expending same for her personal pleasure and enjoyment, she should be congratulated, praised, and not censured. No one is harmed by such doing and in fact this accomplishes the very purpose of the Act that the debtor be given an opportunity to rehabilitate herself financially during the three year stay period. This debtor has made progress against seemingly insurmountable odds, and should be accorded full credit for her tireless efforts and perseverance. Since each claim stands on its own, there is no harm done to one creditor if the debtor makes a compromise settlement with a different creditor. It is not any concern of the remaining creditors as to what the debtor has done with reference to a settlement with any other creditors.

In the instant case the debtor offered to pay into court all of the rents applicable to the claims held by the respondents, who were the creditors who had not waived payment of rent. The debtor filed a waiver by the remaining secured creditors as to any such rentals. Certainly nothing more ought to have been demanded of the debtor. She should have been accorded the opportunity to pay into court the rents tendered by her and be relieved of any finding of default on her part.

Specifications Nos. 3, 4 and 5 as to Redemption

Section 75(s) of the Bankruptcy Act (11 U. S. C. A. 203(s)), provides:

> "Such farmer may * * * petition the court that all of his property * * * be appraised * * *

> Upon such a request being made the referee * * * shall designate and appoint appraisers * * * such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value."

Section 75(s)(3) of the Bankruptcy Act (11 U. S. C. A. 203 (s)(3)), provides:

> "At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession * * * provided, that upon request of any secured or unsecured creditor * * * the court shall cause a reappraisal of the debtor's property * * * and the debtor shall then pay the value so arrived at into court * * * provided that upon request in writing of any secured creditor or creditors the court shall order the property upon which such secured creditors have a lien to be sold at public auction."

It will be noted that the Act Provides for an initial appraisal and provides that the debtor may redeem by paying into court the amount of such appraisal. The Act then has two provisos, one of which provides for a reappraisal and the other of which provides for a sale of the property. The question is, when do these provisos come into effect? The last proviso was considered by this court in *Wright* v. *Union Central Life Insurance Company*, 61 S. Ct. 196, 311 U. S. 273, 85 L. ed. 184, 44 Am. Bankr. Rep. (N. S.) 280, wherein this court held that the request of the debtor for redemption pursuant to the procedure prescribed in the first proviso cannot be defeated by a request of a secured creditor for a public sale under the second proviso. The question here presented is whether the right of the debtor to redeem at the amount of the initial appraisal can in any and every instance be defeated by the mere demand of the creditor for a reappraisal under the first proviso of said Section 75(s)(3).

We think that this question should be solved bearing in mind the rules laid down by this court in *Wright* v. *Union Central Life Insurance Company, supra,* to the effect that the provisions of the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress. Certainly, if the debtor could be deprived of the right to redeem at the initial appraisal in any and every case, the Act would not have read as it does. We think Congress could not have intended that the debtor could be denied the right to redeem at the original appraisal by the creditors simply filing a request for reappraisal. Such an interpretation would make nugatory the provisions of the Act for the original appraisal and would render the requirement for an initial appraisal wholly ineffectual. There would be no occasion for an initial appraisal. No appraisal would be necessary until after the three year stay had expired. Certainly Congress must have had some thought in mind with reference to the initial appraisal and thought that there was some occasion when the debtor could redeem at that initial appraisal. The construction of the Act as given in this case by the Circuit Court of Appeals simply destroys the provision for redemption at the amount of the first appraisal, and holds that in any and every case the creditors can prevent the debtor from making such redemption. It renders the initial appraisal a useless gesture.

The right of secured creditors to demand a reappraisal, in the instant case, cannot be grounded upon the decision of the Circuit Court of Appeals, Seventh Circuit, in *In re Wright,* 126 Fed. (2d) 92. In that case, the court made it clear that the right of the creditors to demand a reappraisal did not exist in every case, but that,

> "The court, in the interest of justice, can, and should, make a reappraisal, if the facts warrant it."

We believe that, if the creditors are to be accorded the right to prevent a redemption at the initial appraisal by demanding a reappraisal, the right to the reappraisal must depend upon new facts and equitable principles, and cannot be an absolute right. Bearing this thought in mind, we think that the most that can be said with reference to the right of the secured creditors to prevent the debtor redeeming at the initial appraisal, by demanding a reappraisal, would be that such right could be contemplated by the statute to exist only where some reasonable time has elapsed between the time of the first appraisal and the time that the debtor offers to redeem, and where new facts or some other equitable circumstances exist, showing that the redemption at the initial appraisal would now be inequitable. The mere request cannot take the place of an appeal from the appraisal order. It cannot serve to suspend the appraisal order and prevent the debtor from exercising his redemption rights thereunder.

In the instant case, the record shows that the debtor prayed in her original amended petition that the court grant her an appraisal of her property (Record, page 18). This demand was made April 18, 1939. Through no fault of the debtor, the appraisal was not granted and the debtor had to again apply for an appraisal on January 23, 1942. (See Record, page 21.) The complete record of the appraisers was not filed until June 18, 1942. (See Record, page 28.) Then these secured creditors immediately filed exceptions to the appraisal. Such exceptions were not overruled by the court until August 6, 1942. At that time the ruling was without prejudice to a later application on the part of any and all creditors for a reappraisal (Record, page 36). Consequently, the first opportunity the debtor had to redeem was after August 6, 1942, and then such right was impaired, and practically of no effect, by the order regarding a reappraisement. Nevertheless, the

debtor, immediately thereafter, on August 12, 1942, accepted the appraisal and asked that the court grant her a reasonable time within which to make payment and requested the court to enter an order prescribing the procedure. (See Record, page 36.) On January 23, 1943 the debtor's consent to the appraisal and motion to fix time and terms of payment was overruled by the court (Record, page 41, Par. IV). The respondents' demand for a reappraisal was again deferred by the court (Record, page 42, Par. VI). There was never a moment when this debtor was allowed to redeem at the appraisal figure. Then on September 4, 8 and 23, 1943 the respondents filed additional applications for a reappraisal, and followed same up with their joint motion or application to terminate the three year stay.

In answer to the application of these secured creditors to end the three-year stay and to have the debtor adjudged in default, the debtor alleged that, ever since February 17, 1943, she has sought to redeem the real estate but that the court and the secured creditors, respondents herein, have denied her such right by demanding payment of excessive rentals and by the making of demands not authorized by the law (Record, pages 77-79). The respondents herein, in their reply, admitted that they have requested a reappraisal and have demanded that the debtor be required to pay all delinquent rentals at the time of redemption and in addition thereto the reappraised value of her property (Record, page 85).

The record thus shows that the debtor, petitioner herein, never was given an opportunity to redeem at the initial and sole appraisal; that she sought so to do constantly prior to the date of the entry of the orders herein, and that she was prevented, through no fault of her own, from redeeming at such initial and sole appraisal. The delay in attempting to make redemption was due to the fact that the

secured creditors, respondents herein, demanded that conditions be placed upon the right of redemption in excess of what the law prescribed. Such conditions would have required the debtor to pay rent for a period prior to the entry of the stay order. Since the first appraisal on May 21, 1942, there has been a continual filing of exceptions, objections and motions for reappraisals, culminating on October 4, 1943 in a motion by these unsecured creditors to strike the debtor's petition for time and terms of redemption under the initial and sole appraisal. The last paragraph of such pleading (Par. 5, Record, page 72) discloses the persistent efforts of these respondents to prevent this debtor from redeeming her property. It is the secured creditors, respondents herein, who have occasioned the delay, and the debtor ought not to be penalized thereby. The initial appraisal still stands and would have been used to end this proceeding, except for the efforts of these respondents. The debtor should have been permitted to redeem under it, and should now be given that privilege.

Under these circumstances, we believe that a liberal interpretation of the Frazier-Lemke Act (§ 75(s) of the Bankruptcy Act), to give the debtor the rights which Congress intended, could not be said to provide that the secured creditors have a right to demand that the debtor redeem at a reappraised value in the instant case. At the time of the appraisal herein the value of the property was determined and the only constitutional right of the secured creditors, respondents herein, was to receive that value. The debtor did not request any delay in redeeming at that value; therefore she believes that there is no justification for the demand of the secured creditors that they be given the advantage of redemption at a new appraisal at this time and after all this delay. It is admitted that during the year 1943 there was a substantial increase in the market price of land in Box Butte County, Nebraska. The action of the

secured creditors and the court in preventing the debtor from making redemption, at the times requested by her, is now attempted to be made use of by the respondents herein, to require the debtor to pay more for the land than she would have had to pay at the time that she wanted to make redemption. It would not seem fair that the secured creditors, by making excessive demands, and the trial court, by refusing to fix the time and terms for redemption, could prevent a redemption when the debtor wanted to redeem, and thereby demand that the debtor redeem at a reappraised value at a later date. The equities of the case would indicate that the debtor should be given her right to redeem as of the date she wanted to do so, and that the delay, caused through no fault on her part, should not be used against the debtor.

We believe that it was clearly the intention of Congress that the debtor should have an opportunity to redeem at the amount of the first appraisal for a reasonable length of time. We believe that the debtor's right to make such redemption cannot be denied her. It is our most earnest contention that the debtor's right in this redemption, at the value fixed by the initial appraisal, survives all lapse of time until the debtor has had a fair and full opportunity to redeem at that appraisal. Just as the Statute of Limitations is suspended so as to preserve the creditor's rights while the bankruptcy proceedings are pending, in like manner the debtor's right to redeem at the value fixed by the initial appraisal should remain, so long as she is hindered by exceptions, motions and similar pleadings. The initial and sole appraisal became final, but redemption under it was prevented by these respondents. We believe that, under the circumstances, the debtor should be permitted to redeem, at the value fixed by the initial appraisal. The court ought not to hold over the head of the debtor the threat of a reappraisal to be ordered at some future un-

certain time at the pleasure of the secured creditors and the court, and thus deprive the debtor of any opportunity to redeem under the initial appraisal, despite the fact that the debtor always wanted to do so.

Conclusion

It would seem evident that the judgment of the Circuit Court of Appeals is contrary to the directions of this court that the provisions of the Frazier-Lemke Act (§ 75(s) of the Bankruptcy Act) for the relief of the farm debtor be liberally construed. The Circuit Court of Appeals in the instant case narrowly construed the Act so as to adjudge the farm debtor to be in default on the payment of rents, when the debtor had offered to pay the rents due all the secured creditors, except those who had waived payment. This we believe to be uncalled for. It deprives the farm debtor of the opportunity to make a financial rehabilitation, and condemns her for her attempt thereat.

The ruling of the Circuit Court of Appeals further deprives the farm debtor of any opportunity to redeem at the value fixed at the initial appraisal, although she had been continuously seeking such opportunity from the date the initial appraisal was confirmed by the court until the trial below. It nullifies and renders useless such initial appraisal.

This case does not present a situation where the farm debtor delayed in tendering redemption for a period of time after the initial appraisal, but this case presents the situation where the farm debtor sought to redeem promptly after the initial appraisal and repeatedly requested such an opportunity. Since the debtor was denied the opportunity to redeem at the value fixed by the initial appraisal, through no fault on her part, we believe that the debtor should now be accorded the right to redeem at the initial appraisal.

The ruling of the Circuit Court of Appeals places an unjust burden upon the debtor and penalizes her from making redemption of her property and is contrary to the letter and spirit of the Act.

We earnestly contend that the judgment of the Circuit Court of Appeals affirming the orders of the district court should be reversed, and that this debtor should be permitted to pay the amount tendered as rent, and redeem her property at the initial and sole appraisal of same.

Respectfully submitted,

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Counsel for Petitioner
Charlotte C. Worley, Debtor.

Dated September 21, 1945.

(24)

In The

SUPREME COURT OF THE UNITED STATES

Number 443

CHARLOTTE C. WORLEY, DEBTOR, PETITIONER,

V.

CHARLES W. WAHLQUIST; FRANCIS M. WHITLOCK, AS ADMINISTRATOR OF THE ESTATE OF SARAH E. WHITLOCK, DECEASED; AMERICAN BANKERS INSURANCE COMPANY, A CORPORATION; THE OMAHA NATIONAL BANK, A CORPORATION, TRUSTEE; ROBERT L. SMITH; AND OAK PARK TRUST AND SAVINGS BANK, TRUSTEE, SECURED CREDITORS, RESPONDENTS.

RESPONDENTS' BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.

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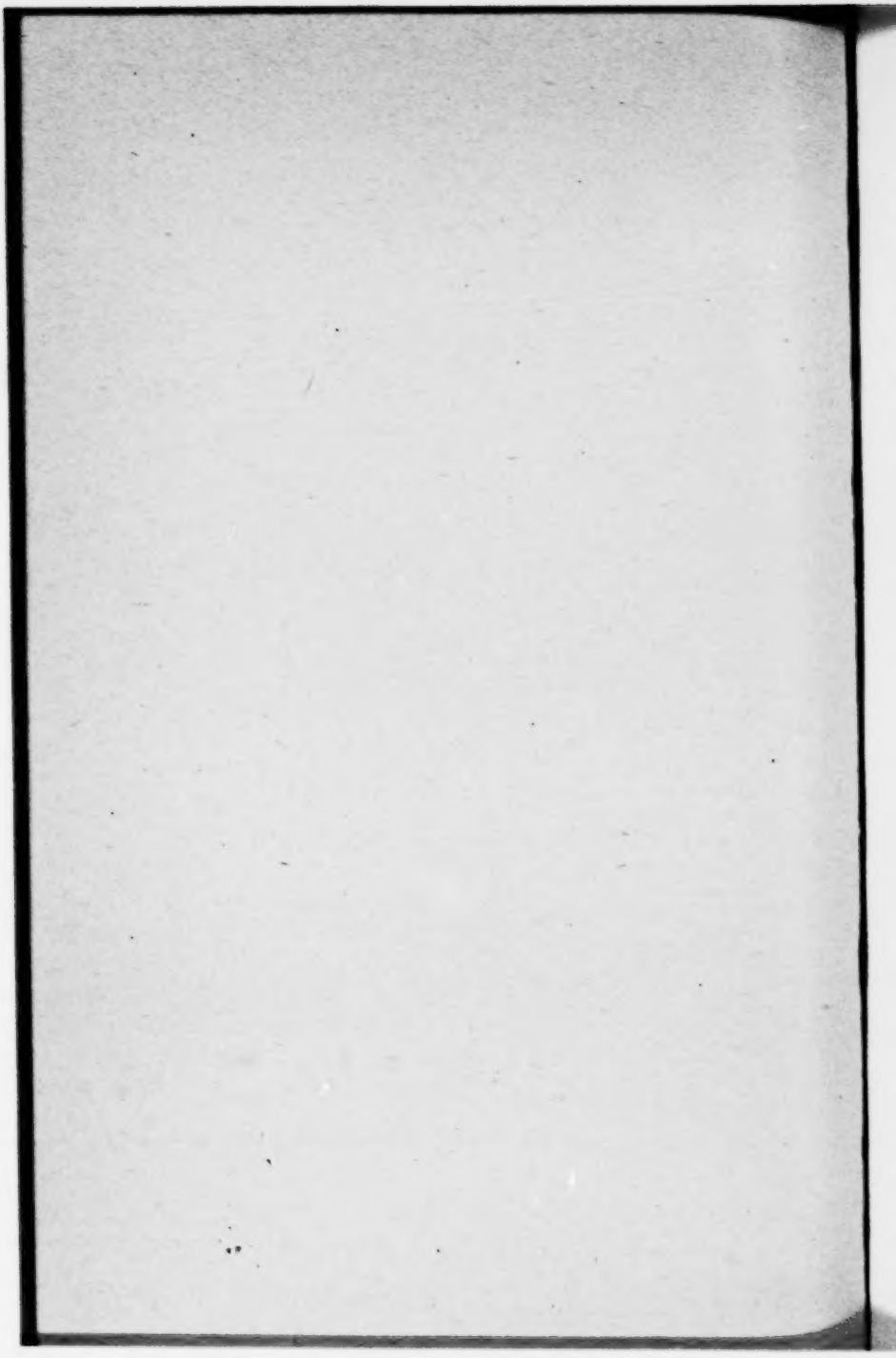
WEKESSER PUBLISHING CO., Law Briefs, Lincoln, Nebr.



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Alliance, Nebraska,
Attorneys for Respondents.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The respondents, and each of them, pray that the petition of Charlotte C. Worley, petitioner, that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals, Eighth Circuit, in the above cause, designated in said court as No. 12,960, wherein the petitioner was appellant and the respondents were appellees, be denied.

I.

REASONS RELIED UPON FOR DENIAL OF WRIT.

1. The decision of the Circuit Court of Appeals does not deprive a farm debtor of the right and opportunity to make compromise settlements with secured creditors so as to provide for the debtor's financial rehabilitation, as that question was neither presented nor decided in said matter.

2. Respondents deny that the farm debtor has offered to pay into court the amount of the rentals due the respondents, except upon unreasonable conditions dictated by her at the time of trial, which are not imposed upon the respondent creditors by law.

3. The question of whether a farm debtor may make outside settlements and financial arrangements as to redemption with friendly secured creditors without obtaining prior approval of the court was neither submitted to nor decided by the court.

4. Section 75 (s) (2) of the Bankruptcy Act (11 U. S. C. A. 203 (s) (2)), requires that the rental shall

be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed, first, among the secured creditors as their interests may appear, second, among the unsecured creditors as their interests may appear.

5. Under Section 75, sub s (3) of the Bankruptcy Act any creditor (or debtor) is entitled to a re-appraisal of his security at any time before redemption, particularly when the application for re-appraisal is timely made and it has been stipulated and agreed by all parties concerned that the security has increased (or changed) in value since the initial appraisal.

6. Respondents deny that farm debtor's failure to redeem at the initial appraisal was due to no fault of farm debtor.

7. The decision does not hold that the mere filing of requests for re-appraisal by secured creditors deprives a farm debtor of an opportunity to redeem at the value fixed at the initial appraisal.

II.

SHORT STATEMENT OF THE MATTER INVOLVED.

The following is submitted by way of addition and correction to petitioner's statement.

Petitioner's original petition in these proceedings was filed by her on November 5, 1937. The schedules thereto attached list, in addition to taxes and debts owing the United States and taxes owing to the State of Nebraska and its municpal subdivisions, the names of 17 creditors holding claims secured by real estate mort-

gages, and the names of 32 creditors holding unsecured claims (Record 1-17).

The United States, the State of Nebraska and its municipal subdivisions, and the unsecured creditors did not file so-called waivers of payment of rents into court or agreements concerning rental payments and redemption.

Between the time of filing said petition on November 5, 1937, and the date of the effective rental order dated February 19, 1943, a number of rental orders were entered all of which, to date, have been resolved in favor of the debtor and against the creditors.

The effective rental order of February 19, 1943, among other things, provides, first, that all rentals shall be paid into court; second, that creditors holding mortgages on the debtor's 2,960 acre Box Butte County farm shall participate in the rents in the proportion to the acreage covered by the mortgages; and third, appointed P. T. Grove as creditors' agent to represent their interests in ascertaining production of and proceeds from crops payable as rental, his fees and expenses to be paid by the creditors and no part thereof to be charged to the debtor.

The debtor operated under this effective rental order, from the date thereof until after her crops were harvested and shortly before trial, without exception on her part or on the part of any creditor.

Debtor's application for appraisal, filed January 23, 1942, does not express a "present desire" or "readiness" to redeem, but a desire for an "opportunity" to redeem for the appraised value (Record 21).

The court's order, filed August 6, 1942, on creditors' exceptions to the original appraisal was based entirely upon the fact that there was no evidence of fraud in making the appraisal and not upon the question of whether the value was fair and the last paragraph expressly provides "that the order herein made concerning said appraisal shall be and is without prejudice to a later application on the part of any or all of said creditors for a re-appraisal, or any objection or exception that may be made to any such later application" (Record 35).

The motion which petitioner filed August 12, 1942, was made before the stay period expired and was not an offer to redeem, but a request that the court fix terms and allow her time to redeem at the initial appraisal (Record 36).

The aforesaid motion was overruled January 22, 1943, only to the extent that it constitutes a motion for action by the court (Record 41).

Petitioner's statement that secured creditors who then owned all of the mortgages, other than those held by the respondents herein, had several months before filed their acceptance of the appraisal and signified their willingness to permit redemption by the debtor at such appraised amount is not a correct statement in that only two of her creditors filed such acceptances, one of them being Terry Carpenter who then alleged ownership only of a mortgage on 160 acres (Record 37), and Alliance Loan and Investment Company who then alleged ownership only of a mortgage on 160 acres and another on 320 acres (Record 37-38).

On September 3, 1942, each of respondents filed a separate request for re-appraisal of his security (Supp. Record 7-14), and renewed the requests on September 4, 1943 (Record 47-58).

The court, by its order, dated January 22, 1943, deferred ruling on the aforesaid "request for re-appraisal filed by creditors in September, 1942," until the further order of the court (Record 42). The ruling was deferred by the court and not at the instance of the creditors.

The petitioner has never paid the rentals under the effective rental order of February 19, 1943, due these respondents, and has never offered to pay the 1943 rental due these respondents except, at the trial she offered to pay the amount of rental she claimed due them and then only upon condition that the offered payment be accepted in full settlement, without investigation or verification.

According to the records the only claims owned by friendly creditors at the time the rental order was entered, February 19, 1943, was the one owned by Alliance Loan and Investment Company covering 160 acres and two owned by Terry Carpenter, one covering 160 acres and the other the Sheridan County land. The other assignments held by them were procured between the time of the effective rental order and the trial. At the trial Alliance Loan and Investment Company assigned its claims to Martha E. Hillerege (Record 224-225).

At the trial, on December 6, 1943, it was stipulated between the petitioner (debtor) and respondents (creditors) that there has been an increase in the value of the land since the original appraisal (Record 157).

ARGUMENT.

Regarding Rentals.

Section 75 (s) (2) of the Bankruptcy Act (11 U. S. C. A. 203 (s) (2)), provides:

> "* * * such rental shall be paid *into court*, to be used, first, for payment of *taxes* and *upkeep* of the property, and the remainder to be distributed among the secured and *unsecured* creditors and applied on their claims, as their interests may appear. * * *" (Italics supplied.)

Petitioner is in error in stating "that the entire controversy herein hinges upon the question as to whether the debtor had a right to file a waiver from some of the secured creditors and take credit for the amount so saved on the payment of the rentals." This proceeding was instituted by respondents solely because the debtor fails, neglects and refuses to comply with the rental order by paying into court rentals which they, and they alone, would participate.

Respondents are not and never have been interested in the settlements, if any, made by the petitioner with her other creditors, either as to rentals or redemption, so long as she does not use rentals owing to these respondents in making such settlements. However, the trial court, on its own motion, and incidental to the is-

sues presented at the trial between the petitioner and the respondents, was concerned by the fact that the petitioner and certain other creditors were ignoring the bankruptcy court in the operation of petitioner's property wherein the trial court said in its memorandum opinion, as stated in the record at pages 216, 217 and 220, as follows:

> "Finally, the debtor asserts in her pleadings that she should not be held in default because the moving secured creditors are only a part of those holding liens on her lands; that Carpenter (it now appears, Carpenter and Martha E. Hillerege) has purchased the other liens; and that she has an arrangement with him whereby she may redeem at the initial appraisal the lands on which he has liens, and meanwhile be absolved from rental responsibilities as to them. Generally, Carpenter and Mrs. Hillerege agree that such an arrangement exists."

Let the debtor's situation be clearly stated. She is a bankrupt. The filing of her initial petition herein "immediately * * * subject(ed) the farmer and all his property, wherever located, for all the purposes of this section to the exclusive jurisdiction of the court." See Title 11 U. S. C. A., Section 203 (n) wherein it is further provided that:

> "In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been

> filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

By subsection (o) of the legislation, it is also provided that:

> "All of the debtor's property, wherever located, shall be under the sole jurisdiction and control of the court in bankruptcy, and subject to the payment of the debtor farmer's creditors, as provided for in this section."

Even the *possession* of the debtor's property which she is allowed to retain, is, by subsection (s) (2) of the legislation, allowed to her only, "in the custody and under the supervision and control of the court," and expressly "on the condition of the payment of rental. * * *"

> "The reasons prompting the court to that attitude are these: (a) In any event, there is before the court no accounting, upon which, if the suggested division were to be approved in principle, the court could affirm the correctness of the tendered rental, even on the debtor's theory of division. (b) Defaults would still remain in the actual marketing of grains, as distinguished from the negotiation of loans thereon. (c) For 1943, and so long as its rental order stands, the accounting is to be for the rentals of all of the land. The court is not going to give effect to privately and secretly negotiated and concealed arrangements between the debtor and a selected and favored group of credi-

tors. Let full accounting, payment and distribution up to date be made; and then if prospective changes are to be made let the interested parties present in writing, openly, frankly and honestly, the arrangement which they have between themselves. If it is at all possible, consistent with fairness to other creditors, the court will approve the arrangement; for example specifying an agreed interest rate as to certain lands as rental for the future in lieu of grain rental, if, in the circumstances affecting the debtor's operation of her land, such action seems calculated to work no disadvantage to dissident creditors. (d) The position taken by the debtor neglects the fact that both by the rental order and by the law, Title 11 U S. C. A., Section 203 (s) (2), the debtor is to pay rent not to the secured creditors, but rather to the court; and that the creditor is to participate in it only upon the court's order and after the satisfaction of certain specified prior charges. It is beyond the power of the debtor and her creditors particularly of the debtor and a favored creditor, to alter the court's order, save with the court's approval. (e) Corollary to the last item, the actual allocation and division of the gross rentals are to be made by the court upon application and showing and not by private arrangements of interested parties, and in this instance, it cannot yet be exactly known how the gross rentals for 1943 from the debtor's lands will be distributed."

In addition to the statements of the trial court on the subject, we wish to add that the petitioner's schedules list the names of 32 unsecured creditors, none of whom have filed waivers to the payment of rents and none of whom have agreed that the petitioner may make private arrangements with friendly creditors outside of court.

Petitioner has entirely ignored their rights. The act specifically provides that the court shall distribute the rents, after payment of certain specific items, among the secured and *unsecured* creditors and apply on their claims as their interests may appear.

It is without doubt the intention of the act that if the value of the property and the rents received during the stay period exceed the encumbrances on the debtor's property the unsecured creditors will share in the surplus. Petitioner has entirely ignored the rights of the unsecured creditors.

The debtor operated under the rental order of February 19, 1943, until shortly before the trial, December 6, 1943, without objection to the rental order on either the part of the debtor or any of the creditors. The rental order provides that the creditors shall pay the fees and expenses of their agent, P. T. Grove, appointed in their behalf by the court. The debtor and her friendly creditors, Terry Carpenter and Alliance Loan and Investment Company, have sought to evade the payment of their proportion of the fees and expenses of the creditors' agent out of their share of the rents, notwithstanding that they had the opportunity to except to the rental order at the time it was entered and did not and that nearly all of the assignments of the secured creditors which they now hold were procured after the rental order was entered.

It is true, as stated by petitioner, that this court has said that "the Frazier Lemke Act (§75 (s) of the B. A.) must be liberally construed to give the farmer-debtor the full measure of relief afforded by Congress," but it

is also true that this court has said in the case of *John Hancock Mutual Life Insurance Company* v. *Bartels*, 308 U. S. 180, 84 L. Ed. 176, that:

> "The procedure under subsection (s) is intended to protect all interests. * * * The scheme of the statute is designated to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer-debtor, while protecting the interests of his creditors by assuring the fair application of whatever property the debtor has to the payment of their claims, the priorities and liens of secured creditors being preserved."

Concerning petitioner's statement that "at the trial on December 6, 1943, she offered to pay into court the rents due these Respondents," the facts are that the petitioner had violated the provisions of the rental order by refusing to furnish the agent of the creditors, appointed by the court for that purpose, statements and information concerning her crops produced, proceeds from the sales of crops, rentals collected from her tenants, and other information and, at the trial, the creditors were compelled to call her as a witness and rely entirely upon her own statements without the opportunity to verify the same. Her testimony is as follows (Record 147):

> "306 Q. Is that tender of the rent conditioned upon the other tender being accepted?
>
> A. I don't think so, what do you think Mr. Ginsburg?
>
> Mr. Ginsburg: I thought I made it clear, as counsel for the witness, I want to again repeat, we tender both for the redemption and that we are not tendering one without the other.

The Court: Is the Court to understand that no tender at all is made of the rental except and apart from and divorced from a tender of the redemption?

Mr. Ginsburg: That is correct.

307 Q. We assume that you do not intend to pay this rent unless you are permitted to redeem at the initial appraisal?

Objection. Sustained without prejudice to counsel for secured creditors inquiring as to what her intention actually is.

308 Q. Miss Worley, why do you join together the tender which you make to redeem the land with the tender of the creditors' 1943 rental?

A. Well, I want to pay my rent at this time. If I have to appeal the question is whether I have the right to the first appraisal, it would seem wise to appeal rent also because it is a unit rent.

After a conference with her attorney, debtor reconsidered and offered to pay into court an amount which she claimed to be the rental due from lands mortgaged to appellees in accordance with the rental order of February 19, 1943, amounting to $3101.40, *but only upon condition that it be accepted in full settlement.* She stated she then had the money available (Rec. p. 149).

No rental for 1943 has been paid to this date."

The criticism by the trial court which the petitioner complains of has to do with petitioner's conduct during the trial with relation to her farming operations and appears in Findings of Fact numbered 23, 26 and 27, and Findings of Law numbered 23, of the court's order (Record 238, 239, 243) and is as follows:

23.

"The debtor maintains no bank account though her financial turnover has been in terms of thousands of dollars annually, and her financial dealings cannot be traced through normal business channels. In lieu of banking connections during the pendency of this cause she has borrowed money from one Frank Abegg who operates a loan business under the name of Alliance Loan Investment Company, and has also paid to, and lodged with, him large sums of money arising from the sale and marketing of crops raised on her real estate, all in a secretive and confusing manner and without the making of any accounting thereof to the court."

26.

"The only information the court has concerning crops planted or produced by the debtor during the year 1943 is the information given by the farm debtor when called to testify at the hearing herein by the secured creditors."

27.

"The debtor's testimony, demeanor, deportment and conduct in court in respect to the accounting for and payment of rents was, and is, evasive, uncooperative, secretive and contumacious."

23.

"The debtor's offer at the hearing herein on December 6, 1943, to pay as rent the sum of $3,101.40 in full satisfaction of all rents then accrued from lands mortgaged to the applicant creditors is inadequate to purge the default for the following reasons:

"(a) It is incomplete and inadequately supported by production of data.

"(b) It was not an accounting for the rentals received from all of the lands of the debtor, or even of those located in Box Butte County, Nebraska.

"(c) It was upon a basis which ignored and rejected the court's effective rental order.

"(d) Defaults would still remain in the actual marketing of grains as distinguished from the negotiations of loans thereon.

"(e) The offer ignores the fact that the debtor is to pay rent not to the secured creditors, but rather to the court.

"(f) The offer was conditional."

Regarding Redemption.

We cannot agree to petitioner's statement that "the question here presented is whether the right of the debtor to redeem at the amount of the initial appraisal can in any and every instance be defeated by the mere demand of the creditors for a re-appraisal under the first proviso of said Section 75 (s) (3)."

We do not concede that petitioner's aforesaid statement is not the law, but in this case the debtor herself agreed at the trial that her land has increased in value since the initial appraisal. Furthermore, respondents were prepared to prove and would have proved, except that the trial court thought it unnecessary, that their securities had more than doubled in value between the time of the initial appraisal and the time of trial and that such increase in value was gradual from the time of the initial appraisal.

The debtor quotes from *Wright* v. *Union Central Life Insurance Company*, 311 U. S. 273, 85 L. Ed. 184, to the effect that the provisions of the act must be liberally construed to give the debtor the full measure of relief afforded by Congress. However, in such last named case and at a point only a few lines earlier, the court said:

> "Safeguards were provided to protect the rights of the secured creditors, throughout the proceedings, to the extent of the value of the property."

Again, in *John Hancock Mutual Life Ins. Co.* v. *Bartels*, 308 U. S. 186, 60 Sup. Ct. 221, 84 L. Ed. 176, the court, in the closing part of its opinion, said:

> "The scheme of the statute is designed to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer-debtor, while protecting the interests of his creditors by assuring the fair application of whatever property the debtor has to the payment of their claims, the priorities and liens of secured creditors being preserved."

It is apparent, therefore, that appellant's claim to a liberal construction carries with it the unseverable admission that the rights of the secured creditors are to be safeguarded and preserved. The ultimate result necessarily is that appellant's reference to liberality of construction utterly fails either to affect or establish the claim that the debtor was not accorded the right to redeem at the existing appraisal nor that she was even entitled to have such right accorded her in the face of the repeated and timely requests for re-appraisal on the part of the secured creditors.

Appellant next contends that she was denied the right to redeem at the existing appraisal because the appellees insisted upon conditions being placed upon the right of redemption in excess of those prescribed by law. Specifically, appellant claims that she was denied the right to redeem because the secured creditors demanded the payment by the debtor of delinquent rentals covering a period prior to the date of the stay order. In considering such an argument the fundamental inquiry must logically be: Did the trial court refuse the debtor's so-called attempted redemption because of the failure to pay rentals covering a period prior to the date of the stay order? If this question is answered in the negative, appellant's entire contention in this part of her argument falls apart. In short, if the trial court placed no reliance on the claim of the secured creditors that debtor be required to pay delinquent rentals as a prerequisite of redemption, debtor could not be and was not prejudiced. What are the facts in this connection? An examination of the record shows that the trial court specifically determined that the secured creditors' contention as to delinquent rentals need not be passed upon and placed its conclusion squarely upon the ground that the prior request of the secured creditors (coming as it did long before any move was made toward redemption by the debtor) was in and of itself sufficient, as a matter of law, to prevent redemption by the debtor until after the re-appraisal has been had. This clearly appears from the following statement made by the trial court in its memorandum filed March 3, 1944 (Rec. 210):

> "The Secured Creditors, Charles W. Wahlquist and others, also filed separate answers to the tender

> in redemption (filings 258, 259, 260, 261, 265) in which they denied the debtor's claimed right to redeem, first because they themselves had the right to re-appraisal; secondly, by reason of the debtor's persistent default in the payment of rentals. Their first ground is considered to be well taken and sufficient, and, therefore, the second will not be discussed in this relation.",

and from paragraphs 2, 3, and 4 of the trial court's conclusions of law relative to the debtor's tender for redemption (Rec. 253), and from paragraph 4 of the trial court's conclusions of law relative to the debtor's petition to redeem (Rec. 259). The inescapable conclusion is that the trial court rested its holding upon the prior seasonable request for a re-appraisal by the secured creditors and therefore it is utterly impossible to conceive how the contention of the secured creditors as to delinquent rentals operated to affect or prejudice debtor's redemption rights.

In *In re Wright*, (7th Cir.) 126 Fed. (2d) 92, in which certiorari was denied, 317 U. S. 627, 63 Sup. Ct. 39, 87 L. Ed. 507, the court stated:

> "(1) May there, under any circumstance, be a re-appraisement? * * *
>
> "Our conclusion as to the first query is that neither party is bound by the first appraisement. The court, in the interest of justice, can, and should, make a re-appraisement, if the facts warrant it. No express statutory authorization for a re-appraisement would be necessary. It is inherent in equity principles. Moreover, we think the statute authorizes re-appraisals.

> "On behalf of a debtor, it is easy to conceive of instances where buildings were burned, or damages from lightning, floods, or other causes have materially lessened the value of the premises. Fairness to the debtor would require a reduction in the redemption price, that is in a re-appraisement.
>
> "On the other hand, if the circumstances show an increase in the value of land during the years which the debtor is in possession, fairness to the creditor also requires a re-appraisement."

Petitioner's first and only offer of redemption was made at the time of the trial on December 6, 1943, at which time she admits an increase in the value of her lands. It is true that on August 12, 1942, she filed an instrument accepting the initial appraisal and requesting the court to grant her time within which to pay the appraised value of the property into court and to fix the terms of payment and that the court overruled her motion or application insofar only as it required action on the part of the court.

Section 75 (s) (3) of the Bankruptcy Act provides:

> "at the end of three years, or prior thereto, the debtor may *pay into court* the amount of the appraisal of the property of which he retains possession." (Italics supplied.)

In view of such provision and the fact that the stay order was entered February 22, 1943, and would not expire until February 22, 1946, conditional upon compliance with the rental order, why was it necessary for the debtor to request the court to fix terms of redemption and time for redemption other than those imposed by the statute?

Petitioner states that all the creditors did was to file applications for a re-appraisal and nothing further. The facts are that respondents were not only prepared to present evidence in support of their applications for re-appraisal, but repeatedly invited action by the court upon them. On the other hand, the petitioner, having obtained an initial appraisal favorable to her, notwithstanding a gradual increase in value of the property, has sought to ignore respondent's applications for re-appraisal instead of cooperating to have them acted upon by the court one way or another.

The trial court has been familiar with this proceeding since its inception in 1937, and that the petitioner was not able to redeem until December 6, 1943. That the trial court did not take affirmative action on the applications for re-appraisal because it considered it useless to cause a re-appraisal until it became apparent that redemption would be made, appears from the court's statement in its memorandum opinion (Rec. 222), which is as follows:

> "Finally, there are the many requests of the secured creditors, Charles W. Wahlquist and others, for re-appraisal. They would be sustained and immediate re-appraisal would be directed but for one circumstance. It is desirable that the revaluation be made as nearly as practicable at the time of, or not too long before, redemption. * * * If the debtor were to signify her desire presently to redeem at the reappraised value, the motions for re-appraisal would be allowed immediately, but she does not so indicate. On the contrary, still asserting her claim of the right to redeem at the initial appraisal, * * * she asserted on the hearing that she would redeem

> at a re-appraised value only if and when her threatened appeal should be finally unavailing * * * in that situation present re-appraisal would be a useless and expensive gesture."

Petitioner contends that she should be permitted to redeem at the initial appraisal because she wanted to redeem at that appraisal shortly after it was made. If, on August 12, 1942, petitioner had been able to redeem at the initial appraisal she undoubtedly would have perfected the redemption in the manner required by law instead of requesting the court to allow her time to redeem for the amount of such appraisal.

Petitioner's statement that she was prevented, through no fault of her own, from redeeming at the initial appraisal, and that she did not request any delay in redeeming at that value is contrary to the facts as disclosed by the record.

It is not the court that has held over the head of the debtor the threat of a re-appraisal, it is the law itself as written by Congress.

CONCLUSION.

The trial court and the Circuit Court of Appeals, on appeal, terminated the debtor's stay period first, because she failed and refused to comply with the rental order insofar as it relates to respondents; second, because she, with two friendly creditors, conspired to disregard the jurisdiction of the court over her property and the court's right to direct payment of taxes and upkeep of the property before the remainder can be distributed to the friendly creditors, and disregard the rights of the

unsecured creditors who participate in the surplus, if any.

The decision does not deprive the farm debtor of an opportunity to redeem at the value fixed at the initial appraisal provided there has been no increase in value between the time of the original appraisal and the time of the redemption.

The record does not support the petitioner's statement that she sought to redeem promptly after the initial appraisal and repeatedly requested such an opportunity. The record is that she attempted to commit the court and her creditors to the initial appraisal and thus deprive the creditors of their right to a re-appraisal, notwithstanding an increase in value, by simply talking about redeeming without any further action on her part.

We submit that the petition for writ of certiorari should be denied.

Respectfully submitted,

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Dated October 22, 1945.